



Sections 104, 104A-D & 108 of the Resource Management Act 1991

Section 42A Planning Report for Hearing

Applicant's Name:	TRACY ANN FLEET
Street Address:	30 Queens Drive, Allenton, Ashburton 7700
Legal Description of Site:	Lot 42 DP23494
Zone:	Residential C
Consent number:	LUC21/0050
Application summary:	Removal of a listed tree – Tilia Tomentosa / x Europa at 30 Queens Drive, Allenton, Ashburton.
Status:	Non-complying
Date of Site Visit:	Thursday 3 rd June 2021
Section 92 request:	N/A

Notification:	The application was recommended to be publicly notified and was notified on the 3 July 2021.
Submission Close Date:	30 July 2021
Submissions:	A total of three (14) submissions were received within the submission period, with one (1) additional late submission received after the closing date. This late submission was consequently accepted by way of Commissioner's decision dated 19 August 2021. A summary of submissions is attached to this report (Appendix A).
Recommendation:	That subject to new or additional evidence being presented, the application be declined in its present form pursuant to section 104D of the Resource Management Act.

1 INTRODUCTION

This report has been prepared on behalf of the Ashburton District Council (the Council) as consent authority in accordance with section 42A of the Resource Management Act 1991 (RMA). This report has

been prepared to assist the Commissioner acting as the consent authority under delegation. It should be noted that the recommendations made in this report are made at the time of writing with the information available. The recommendations herein are in no way binding and it should not be assumed that the Commissioner will reach the same conclusions having heard all the evidence.

My name is Mary Clay. I am a planning consultant with Avanzar Consulting Ltd. I hold a Bachelor of Science (Geography) from the University of Canterbury and a Master of Applied Science (Environmental Management) from Lincoln University. I have worked in the field of planning/resource management since 2001, both for Councils and as a planning consultant both in New Zealand and the United Kingdom with some 20 years of experience.

My work has been varied during this time, however I previously worked for the Christchurch City Council as a planner processing resource consents. At the Rutland County Council I spent time working on site with their consultant arborist and processing planning applications and appeals relating to protected and significant trees.

I confirm I have read the Code of Conduct for Expert Witnesses and agree to comply with it. In that regard I confirm that this planning report is written within my area of expertise, except where otherwise stated, and that I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed. The processing of the resource consent application and preparation of this report has been undertaken with specialist advice from Mr Brad Cadwallader.

Mr Cadwallader's assessment is attached as **Appendix B**.

2 DESCRIPTION OF THE PROPOSAL

The applicant proposes the removal of the large protected Tilia Tormentosa – Silver Lime (or Tilia Europa) on the site. The applicant seeking the removal states that they require the removal due to the existence of two structural defects that could cause harm to persons and property.



3 DESCRIPTION OF THE EXISTING ENVIRONMENT

The site is currently vacant, and remains open, with no fence between it and the adjoining site at 28 Queens Drive. Some landscaping remains on the site but the prominent feature of the site remains the large protected tree.



View from the northwestern end of Queens Drive June 2021



View of the tree from on site – June 2021

The Lime Tree on the site was originally identified as a Common Lime however it is now understood to be a Silver Lime, or *Tilia Tormentosa*.



View from Trellech Place

A Silver Lime, or *Tilia Tomentosa* is described by the Royal Horticultural Society as:

T. tomentosa is a large, deciduous tree of variable habit but usually broadly pyramidal reaching to 25m high. Erect branches are often pendent at their tips with white-felted shoots. Rounded leaves 5-13cm long are sharply-toothed, dark green above and covered in a silvery-white felt beneath, turning yellow in the autumn. Fragrant, small, creamy-white flowers are borne in late summer.

The International Dendrology Society's website describes *Tilia Tormentosa* as follows:

A European native, *Tilia tomentosa* is among the most familiar limes grown in Western Europe. Long cultivated in its natural range and grown commercially for its timber in Bulgaria and Romania ([Pigott 2012](#)), an early date for its introduction further west seems very likely. In Britain, the species was in James Gordon's Mile End Nursery in 1767 ([Aiton 1811](#)); Moench's name of 1785 was published in a catalogue of trees in a German park ([Pigott 2012](#)).

Tilia tomentosa is the only member of Section *Astrophilyra* (characterised by stellate hairs beneath the leaves) native to western Asia or Europe; the majority, including some which quite closely resemble Silver Lime, are found several thousand miles away in East Asia.

This is a variable species in southeastern Europe, in leaf shape, hairiness and crown form. Cultivated material further north and west apparently has a much narrower genetic base: trees here usually have erect branches forming a broadly

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conical crown, orbicular leaves with a cordate base, and such a dense tomentum beneath the leaves that they appear white (Pigott 2012). The tree responds to periods of heat and drought by angling its leaves so that the underleaf faces outwards or even upwards; the crown appears to turn white, reverting to dark green under cooler, moister conditions. The effect is to reflect more solar radiation, reducing leaf temperature and perhaps rate of water loss through transpiration (Hirons & Thomas 2018). The white-backed leaves make it easy to pick out in the landscape and viewing a Balkan hillside with all the *Tilia tomentosa* leaves shimmer is a wonderful experience.

In Britain, this is the most vigorous and largest-growing of the 'white-leaved' limes. Many were planted in or around 1800. Two of these, grafted on Common Lime, survive at Highclere Castle, Hampshire, the larger 19 m, dbh 2.05 m in 2012; a famous tree in the paddock next to Tortworth church, Gloucestershire was 34 m, dbh 1.73 m in 2015 (Tree Register 2018). Silver Limes grow well at least as far north as Central Scotland. Examples include an avenue lining the southern drive at Castle Milk, Dumfriesshire (Tree Register 2018), and there are fine specimens at Doune Park near Stirling (T. Christian, pers. comm. 2020). Probably the tallest measured trees, in warmer, more continental climates are 37 m specimens at the Royal Museum for Central Africa, Tervuren, Belgium, (measured 2011) and at Sarrot near Pau, France (measured 2018). A tree of probable wild origin at Bogat, Hungary was 2.04 m dbh in 2001 (monumentaltrees.com 2018). It is hardy as far north as the very south of Finland, where trees planted in the 1920s grow at the Arboretum Mustila (Arboretum Mustila 2020). Aphid resistance and a degree of drought tolerance make *Tilia tomentosa* a popular choice as a lime for street planting.

Long cultivated and common in North America (Jacobson 1996), *Tilia tomentosa* is widely growable in our area, and represented in many collections. Coupled with cold tolerance, its drought tolerance (perhaps the most of any linden – Missouri Botanical Garden 2020) makes it viable even in parts of the central United States.

Many cultivars have been selected in Europe and North America, Hungary being particularly important. Most are clones chosen for their good crown form, at least in youth. Where uniformity is desired, for example in avenues, even those cultivars whose distinctive features cannot easily be described have value. Jablonski & Plietzsch (2014) provide a thorough checklist.

Two old variegated cultivars were recorded in 1903, 'Aureo-Variegata' and 'Pendula Variegata' (Beissner et al. 1903 fide; Jablonski & Plietzsch 2014) but are assumed to be lost to cultivation, as is the way with variegated limes.

In literature, the Silver Lime tree would be familiar to many children in Ashburton and worldwide, as one of the wandwood species referred to in the books of Harry Potter by JK Rowling.

At the time this application was notified, in autumn, the lime retained some of its leaves, and showed signs of new growth below some of its wounds. The lime tree shows evidence of unauthorised pruning just prior to Christmas 2020, on its eastern side, although new growth is evident below the wounds. The tree has also been recently partially ringbarked, and following this, signs were attached to the tree advising that it is an offence to carry out unauthorised work on the tree. An abatement notice is also attached to the trunk of the tree.

4 SUBMISSIONS SUMMARY

A notification report and decision dated 14 June 2021 sought that the application to remove the protected Lime tree would be publicly notified. The application was publicly notified on the 3 July 2021 and submissions closed on the 30th July 2021. 14 submissions were received by the due date, with one further submission received and accepted by the commissioner on the 19 August 2021 pursuant to sections 37a and 37A of the Resource Management Act 1991. On that basis all these submissions have been provided to the Council's arborist Brad Cadwallader.

The submissions are summarised below, full copies of the submissions have been provided to the Commissioner and are available to any party on request. An assessment of the matters raised in the submissions is included within the assessment of effects of the proposal later in this report.

Submission 1 – ID Harding

ID Harding comments that the tree is a danger to the house, glasshouse and workshop at 32 Queens Drive, Allenton. ID Harding provides photographs of the tree as viewed from 32 Queens Drive.

Submissions 2 – Neil Baynes of 157 Harrison St, Ashburton

My Baynes noted that he mowed the lawns at 30 Queens Drive for the previous owner between Dec 2012 and 2016 and had felt concerned about the safety of the tree at the time. He notes that after a heavy rain that water would pool between the three trunks, and was concerned about the prospect for rot or decay. Mr Baynes feels that with the three main trunks each leaning and supported by rope, that it is just ‘an accident waiting to happen’. Mr Baynes considers that the tree should be removed.

Submission 3 - Ruth Bowater

Ms Bowater states that the tree poses significant risk to property and should be removed.

Submission 4 – Joy Coleman – 23 Queens Drive, Allenton

Ms Coleman states that the tree is dangerous and that she has been living in Queens Drive for 21 years and has frequently in a norwest wind had branches 2-3 metres long in her garden. She also knew the previous owner who was afraid to sleep in parts of his house in strong winds. Ms Coleman has grave concerns for the neighbours who might be hurt by the tree.

Submission 5 – Alistair Waddell – 21 Reighton Drive, Allenton

Mr Waddell states he is a frequent visitor to Queens Drive and can see the tree is too close to many houses. He expresses concern that the tree could split at any time and could hit a house of people. He considers that health and safety should be the primary consideration. Mr Waddell thinks the tree should be removed.

Submission 6 – Ray and Jennie Swan – 7 Osborne Grove, Allenton

Mr and Mrs Swan support the resource consent application to remove the tree. Their reason is that flawed nature of the Ashburton District Council’s District Plan regarding this protected tree and other trees in the community. They have concerns regarding the structural defects in the tree noted by Mr Fielding Cotterell. They noted that as gardeners for the previous owner, that he expressed his tree concerns to them. They also consider that the preservation of all aspects of human life come before saving a tree.

Submission 7 – Catherine Mary Luck – 11/14 Kauri Road, Birkenhead, Auckland

On reading the application and supporting arborist’s report, Ms Luck is concerned about the structural integrity of the tree and considers that no private landowner should be subject to the liability for the failure of the tree and that no local government should be allowed to protect a tree that is structurally unsound

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and 'put a landowner in the position where the tree is too risky for insurance underwriters'. She seeks the removal of the tree, as well as seeking review of the District Plan regarding structurally unsound trees.

Submission 8 – Peter Freeman - Birkenhead, Auckland

On reading the application and supporting arborists report, Mr Freeman is concerned about the structural integrity of the tree and considers that no private landowner should be subject to the liability for the failure of the tree and that no local government should be allowed to protect a tree that is structurally unsound and 'put a landowner in the position where the tree is too risky for insurance underwriters'. He seeks the removal of the tree, as well as seeking review of the District Plan regarding structurally unsound trees.

Submission 9 – Corrin Miller – 7 Malfroy Lane, Raumati, Kaipiti Coast

Corrin Millers submission expresses concern around mental health and wellbeing of the applicant and surrounding neighbours.

Submission 10 – Les and Diane Hunter – 93 Wills Street, Ashburton

Les and Diana Hunter state that they fully understand the problems with the ADC Town Planner and have a similar problem with a protected tree. They question the validity of the process used to make them protected. They consider there is one rule for Council and a different rule for private property owners to remove trees.

Submission 11 – Alistair Perkins – 18 Russell Avenue , Ashburton

Alistair Perkins supports the removal of the tree on safety grounds and knowledge of the stress it causes.

Submission 12 Caroline Mary McIntosh – Dunedin North

Ms McIntosh supports the removal of the tree on the grounds of health and safety. She is the daughter of the previous owner. She considers the tree is endangering the physical health and safety of all individuals within its fall zone and also has a significantly negative impact on the mental and emotional wellbeing of individuals within its fall zone. She notes that the previous occupants and others advised the Council of their concerns but no effective remedial action was taken by the Council.

Submission 13 Gary Edward Maxey – 53 Farm Road, Ashburton

Mr Maxey seeks the removal of the tree to remove the health and safety risks and states that no insurance company would insure the tree from any damage it may inflict on the neighbouring houses.

Submission 14 Robert Lester Engelbrecht – 20A Harrison Street, Ashburton

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Mr Engelbrecht notes that the silver lime has been held together by heavy cables and that there are health and safety and potential liability issues if any cables give way. Mr Engelbrecht considers that the tree is 'past its used by date'.

Submission 15 Kathleen Goulter – 67 Trevors Road, Ashburton

Ms Goulter is concerned for the safety of neighbours and visitors, and considers that the tree is not secure. She is also aware of the distress the tree has caused.

5 ASHBURTON DISTRICT PLAN

5.1 Relevant District Plan Rules

The applicable Plan rules are contained in the Operative Ashburton District Plan

The proposed activity is located in an area zoned Residential C zone under the Operative Plan. The land surrounding the site is also zoned Residential C.

The proposal does not comply with the following rules in the Operative District Plan:

Rule 12.7.5 f) the destruction or removal of any tree listed in Appendix 12-4 as Protected Trees (other than a dead, hazardous or dangerous tree)

The proposal is therefore a non-complying activity.

It is noted that the maintenance trimming of any listed tree that does not meet the provisions of a permitted activity is a restricted discretionary activity under rule 12.7.3 however it is considered that the pruning work already unlawfully carried out on the tree does not qualify as maintenance trimming, as the extent of the pruning already carried out, and the methods utilised, cannot accurately be described as maintenance trimming.

Activity Status

The application is a **non-complying activity**. This means that the application is subject to the 'threshold test' under section 104D in order to be eligible for approval.

6 STATUTORY CONSIDERATIONS

6.1 Sections 104, 104B & 104D

Section 104(1) of the RMA provides the statutory requirements for the assessment of the application and sets out those matters that the consent authority must have regard to when considering the application and submissions received. Subject to Part 2 of the RMA, it is considered that the relevant matters for the assessment of this application include:

- a) *Any actual or potential effects on the environment of allowing the activity; and*
- ab) *Any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*

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- b) *The relevant provisions of the Ashburton District Plan and the Canterbury Regional Policy Statement; and*
- c) *Any other matter that the consent authority considers relevant and reasonably necessary to determine the application.*

When forming an opinion in relation to any actual or potential effects on the environment of allowing the activity, section 104(2) allows the consent authority to disregard an adverse effect of the activity on the environment if the District Plan permits an activity with those effects (the permitted baseline).

Section 104(3) states that a consent authority must not have regard to trade competition or the effects of trade competition, or any effect on a person who has given written approval to the application. The application provided written approval from the following persons:

Table 1		
Address	Legal Description	Owner / Occupier
26 Queens Drive	Lot 44 DP 23494	Owner
28 Queens Drive	Lot 43 DP 29434	Owner Occupier
30 Queens Drive	Lot 42 DP 23494	Owner
34 Queens Drive	Lot 40 DP 23494	Owner

Section 104D sets out particular restrictions for non-complying activities, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—

- (a) *the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
- (b) *the application is for an activity that will not be contrary to the objectives and policies of—*
 - (i) *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - (ii) *the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*

Under section 104B of the RMA the Council may grant or refuse an application for a non-complying activity, and if it grants the application, may impose appropriate conditions in accordance with section 108 of the RMA.

6.2 Part 2

The application of Part 2 in the context of considering resource consent applications has been impacted by case law arising from the High Court Decision of R J Davidson Family Trust v Marlborough District Council [2017] NZHC 52 (Davidson Decision). That decision set out that there was no ability to consider Part 2 of the RMA as a separate exercise in line with the ‘overall judgment approach’ that prevailed prior to this judgement. Rather any consideration of Part 2 is in the context of section 104, unless there is invalidity, incomplete coverage, or uncertainty of meaning in the statutory planning documents, in which

case the consent authority may refer to Part 2 in determining an application. However, following the decision of the Court of Appeal [NZCA 316] in relation to this matter, it is my understanding that an assessment subject to Part 2 is once again appropriate in certain circumstances and in particular where a plan has not been prepared in a manner that reflects the provisions of Part 2.

Part 2 of the RMA sets out the purpose and principles of the RMA, being “*to promote the sustainable management of natural and physical resources*” which is defined to mean:

managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while –

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
- (c) Avoiding, remedying or mitigating any adverse effects of activities on the environment.*

Section 6 sets out matters of national importance, there are no matters of national importance considered of particular relevance to the processing of this application.

- a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development*
- b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
- f) The protection of historic heritage from inappropriate subdivision, use, and development:*
- g) The protection of protected customary rights:*
- h) The management of significant risks from natural hazards.*

Section 7 requires particular regard to be had to ‘other matters.’ Of relevance to this application are:

- (b) the efficient use and development of natural and physical resources:*
- (c) the maintenance and enhancement of amenity values:*
- (f) maintenance and enhancement of the quality of the environment:*

Section 8 requires the principles of the Treaty of Waitangi to be taken into account. No particular cultural matters have been identified in relation to this application for the removal of an exotic tree.

7 ASSESSMENT OF ENVIRONMENTAL EFFECTS (SECTION 104(1)(a))

7.1 Written Approvals (Section 104(3)(a)(ii))

Under section 104(3)(a)(ii) of the RMA, the consent authority must not consider any effect on a person who has given written approval to the application.

Table 2		
Address	Legal Description	Owner / Occupier
26 Queens Drive	Lot 44 DP 23494	Owner
28 Queens Drive	Lot 43 DP 29434	Owner Occupier
30 Queens Drive	Lot 42 DP 23494	Owner
34 Queens Drive	Lot 40 DP 23494	Owner

7.2 Permitted Baseline (Section 102(2))

Section 104(2) of the RMA sets out that when considering the effects of allowing an activity, a consent authority may disregard an adverse effect if the plan permits an activity with that effect.

In this instance, I do not consider that there is any permitted baseline to be considered in the assessment of this proposal.

7.3 Relevant Assessment Matters

As a non-complying activity, it is noted that the full range of adverse effects must be considered. The key effect though, is the actual effect on the tree in question.

The Ashburton District Plan contains a series of assessment matters that generally apply to resource consents relating to protected trees, although in this instance it is important to note that the proposal is non-complying and thus all effects on the environment can be considered.

12.9.2 Protected Trees

- a) *Any adverse effects of the proposed activity on the values of the listed tree.*
- b) *The condition and future life expectancy of the tree including any potential hazard to persons or property.*
- c) *The effect of any pruning, damage or disturbance to the crown or root system of the tree on its appearance and health.*
- d) *Whether the tree is currently causing, or likely to cause, significant damage to buildings, services or property, whether public or privately owned.*
- e) *For removal of a tree: the condition of the tree, including whether it poses a danger to people or property, or whether its condition is such that it is unable to be maintained.*
- f) *Whether the applicant has the ability to undertake a complying development without the work detrimentally affecting the tree, and whether the tree or trees seriously restrict the development of the site for its zoned purposes.*
- g) *The effect of any building or structure on the visibility of the tree from a road or public place.*

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- h) *Whether the tree still retains the essential characteristics for which it was originally protected.*
- i) *Any substitute or compensating tree planting proposed.*
- j) *Whether the particular species of tree has been legally declared a noxious plant.*
- k) *Consideration of the purpose of and need for the proposed works, particularly in relation to proposed infrastructure, servicing or utility works, including consideration of alternatives, functional constraints, and the wider benefits of a proposal.*

As noted above in the background section of this assessment, the protected tree in question was allegedly wilfully damaged in late December and was heavily pruned and partially ringbarked at that time. Some of the props supporting the tree were also damaged at that time. Subsequent to this action, the Council undertook remedial works, and has since sought expert advice regarding the health and safety of the tree. Mr Cadwallader, of Cadwallader Tree Consultancy, and Mr Jemmett of Four Seasons Treecare have evaluated the tree for the Ashburton District Council.

Mr Cadwallader notes in his assessment that some ringbarking has occurred, but that in his view, the percentages ringbarked would not be:

'...sufficiently high enough to cause the short-term death of the tree as satisfactory conductivity remains to ensure the roots receive starch and other assimilates from the canopy, and that the canopy is conversely provided the moisture it requires from the root system'.

Mr Cadwallader goes on to state that:

'During my visit to the site in March I noted that the remaining canopy was unaffected by the ringbarking. By late April the canopy was still full and healthy, and some regrowth was observed arising from the truncated stems). If the cuts had been more severe then canopy death would have resulted.

The tree has a cable support system installed in the canopy (image 4). One or two of the cables appears to have been cut during the partial removal of the tree however the canopy still appears to be well supported. Further closer inspection of the support system will be required.

The partial removal of two of the stems has unbalanced the canopy and therefore some corrective pruning will be necessary if the tree is to be retained'.

He further notes:

'While the short-term damage to the tree has not affected tree health or stability, the long-term damage that will result from the ringbarking is much more serious.

Over the next 10-15 years, decay is likely to become well-established in the main stems and the ongoing retention of the tree will much depend on the ability of the tree to produce new wood each year to provide future stability. The other aspect of damage caused to the tree is the loss of some of its visual appeal.'

When I visited the site, in early June, there was clear evidence of regrowth at the truncated stems.

Having regard to the expert advice, it is important to consider the effects of the proposed removal of the tree against its values. It is also important to consider the assessment matters however it should be noted that many of these do not anticipate recent damage in an attempt for removal or reduction, thus making a direct assessment against assessment matters more difficult.

Clearly the recent pruning and ringbarking has had an effect on the crown system of the tree, and on its appearance and health. However, the report provided by Mr Cadwallader indicates that the pruning undertaken is not terminal, and that with management, the tree could be expected to live for many years. He also discussed the cabling system and noted that due to the damage caused to it that it would require reassessment and corrective steps taken as well as additional pruning for balance.

The applicant has provided alternative evidence from 2015, indicating that the tree is no longer safe, and further, has provided a letter from an insurance broker indicating that they had been unable to gain liability insurance for the property.

It is helpful therefore to consider the reasons for the rules and the anticipated environmental results.

The Plan's anticipated environmental result for protected trees is:

'The retention, within their natural life spans, of trees or groups of trees, which have significant value to the District's residents and visitors'

The Plan then notes, within the reasons for the rules, that *'protected trees are considered worthy of recognition because of their ecological, environmental, landscape, heritage or cultural role, and goes on to note that protected trees are 'those that stand out for their particular contribution to the environment'*

Finally, the plan notes that removal of protected trees is a non-complying activity due to their high level of significance.

The tree in question, both before and after its recent pruning and ringbarking, is an impressively sized specimen of lime, visible from some distance from the site in all directions. It is the largest tree in its immediate vicinity, with the closest large specimen trees located in the Ashburton Domain. Furthermore, it is described as both a common lime and silver lime by different arborists. Irrespective of its actual variety, it was originally identified through the District Plan Process as being worthy of protection. Its characteristics ensure that it has a significant contribution to the local urban environment, and according to Mr Cadwallader, recent pruning and ringbarking has not caused any immediate health and safety concerns for adjoining properties.

The following excerpt from Mr Cadwallader addresses the implications of the damage to the tree cause by the applicant in December 2020.

2. Damage to the Tree

- 2.1 As can be seen on the attached inspection record and images, each of the three stems have sustained a chainsaw wound around a portion of their circumference. Stem A has had 64% of the circumference cut, Stem B 28% has been cut and Stem C has had 44% cut.

- 2.2 In my view, these percentages are not sufficiently high enough to cause the short-term death of the tree as satisfactory conductivity remains to ensure the roots receive starch and other assimilates from the canopy, and that the canopy is conversely provided the moisture it requires from the root system.
- 2.3 During my visit to the site in March I noted that the remaining canopy was unaffected by the ringbarking. By late April the canopy was still full and healthy, and some regrowth was observed arising from the truncated stems (see image. 3). If the cuts had been more severe then canopy death would have resulted.
- 2.4 The tree has a cable support system installed in the canopy (image 4). One or two of the cables appears to have been cut during the partial removal of the tree however the canopy still appears to well supported. Further closer inspection of the support system will be required.
- 2.5 The partial removal of two of the stems has unbalanced the canopy and therefore some corrective pruning will be necessary if the tree is to be retained.
- 2.6 While the short-term damage to the tree has not affected tree health or stability, the long-term damage that will result from the ringbarking is much more serious.
- 2.7 Over the next 10-15 years, decay is likely to become well-established in the main stems and the ongoing retention of the tree will much depend on the ability of the tree to produce new wood each year to provide future stability.
- 2.8 The other aspect of damage caused to the tree is the loss of some of its visual appeal.
- 2.9 In my 35 years' experience in the tree industry I can say that this act of ringbarking a tree prior to its removal is unheard of. In my opinion it makes no sense at all and one can only conclude that it was carried out with cynical intent.

Mr Cadwallader then concludes with comment regarding remedial works that can be undertaken.

3. Recommendation for Remedial Works

- 3.1 I agree with the Jemmet assessment of the tree that there are two options to explore at this point in time: there being 1) removal and 2) crown reduction and retention.
- 3.2 I am of the view that the tree is not immediately dangerous and that efforts could be made to restore the canopy by corrective pruning. While this may affect the visual appeal of the tree in the short term, lime trees are resistant and are quite able to respond to heavy pruning. Indeed, they are a tree that will tolerate pollarding.
- 3.3 To that end a complete grown reduction will be required to balance the canopy. Additionally, the cable support system will require reassessment and corrective steps taken if necessary.
- 3.4 A six-monthly inspection of the tree should follow up this work.
- 3.5 Alternatively, and given the resources required to undertake the above work, complete removal may also be considered.
- 3.6 It will be difficult to anticipate the long-term impact of the damage to the tree. With the corrective steps taken, the tree could live for many years if it is continued to be managed appropriately. It is also possible that future inspections deem the tree to have become unsafe, necessitating removal. I am of the view that this would be unlikely to occur within the next 5-10 years.

The Plan, in categorising the removal of protected trees as non-complying, does not anticipate their removal except with good reason. It is clear that the removal of the tree, would have an adverse effect on the tree, and would result in the loss of a significant landscape feature for the community. Furthermore, despite its recent pruning, I consider that the beneficial and special characteristics of the tree that made it worthy of protection in the first place still remain, and that the removal of the tree would have wide reaching community effects that are more than minor, although I do acknowledge the need for ongoing monitoring.

7.4 Summary of Environmental Effects

In my view the removal of the tree will have significant adverse effects, on the tree and surrounding environment. Furthermore, it is my view, having regard to the assessment made by Mr Cadwallader, that the tree is worthy of retention, and that it can be retained in such a way that will ensure that the physical health and safety of residents in the area will not be unduly affected. It is considered therefore, that having regard to the goals anticipated by the plan, and the current and future outlook for the health and safety of the tree, that the removal of the tree would have more than minor adverse effects.

8 RELEVANT OBJECTIVES, POLICIES, RULES AND OTHER PROVISIONS OF THE CANTERBURY REGIONAL POLICY STATEMENT [SECTION 104(1)(B)(V)]

Under section 104(1)(b)(v) of the RMA, the consent authority shall have regard to the relevant provisions of a regional policy statement. The Canterbury Regional Policy Statement (CRPS) became operative on 15 January 2013. In my view the nature and scale of the proposed activity is such that it does not impact on any matters relevant to the CRPS.

9 RELEVANT OBJECTIVES, POLICIES, RULES AND OTHER PROVISIONS OF THE ASHBURTON DISTRICT PLAN [SECTION 104(1)(B)(VI)]

The objectives and policies found in the operative Ashburton District Plan have been assessed. The District Plan acknowledges that particular trees in urban areas make a significant contribution to the character and amenity of the District and to the historic heritage values of the District.

The plan identifies protected trees as having *'a role as heritage items and in maintaining and enhancing the environment and amenity of the district'*

The Plan goes on to state:

'These trees merit identification and protection where they contribute to the District through aspects such as landmark significance, botanical significance or historic significance. There are many ways in which trees may be of value to people and communities and these recognise the different ways in which trees are considered to be of importance. Significant trees also play a role in various aspects of focus under the Act, including as part of natural character, natural features, indigenous vegetation or habitats (under section 6) or amenity values, ecosystems or the quality of the environment (under section 7). These trees may not however be seen by all as having significance and thus may be under threat from land development or changing land use practices. It is important to the amenity of the District as well as to community perception that trees worthy of identification be protected from adverse effects of development.'

Objective 12.2 seeks the protection of trees that contribute significantly to the Districts amenity or heritage.

Supporting policies explain the protection concept in more detail:

Policy 12.2A To identify and record trees of significance, recognising them as heritage items or an important character element in maintaining and enhancing the environment and amenity of the District.

Policy 12.2B In determining items to record, the District Council will have regard to the following factors:

- *heritage / historic value;*
- *scientific or botanic value, including rarity or representativeness;*
- *importance of position in the landscape, including landmark significance;*
- *cultural, ethnical, social, spiritual or recreational significance, including any commemorative value;*
- *age;*
- *size;*
- *form and condition;*
- *contribution to local amenity as an individual tree or as part of a stand of trees;*
- *suitability in relation to the setting or site conditions;*
- *functional value.*

In order to evaluate trees on the basis of this policy, the Ashburton District Council, at the time of plan preparation, used a commonly used template for evaluation. The working document that determined protection in this instance is included below:

LUC21-0052 Tracey Fleet
30 Queens Drive, Allenton, Ashburton

Ashburton District Council – District Plan
 Heritage Tree Criteria / Evaluation System

Free #: 69 Location: 30 Queens Drive Legal Description: Lot 12/43 DP 231/14 Area / Zone: 42 only. Map #:

Species: *Tilia x europaea* *Tilia tomentosa*

Factors	Points: 0	2	4	8	16	32
Heritage/historic	✓			Local area/community significance or planted by well known local identities or organisations.	Early settler plantings or trees intrinsically associated with historic/heritage buildings or places or important historical events.	Trees commemorating important regional or national historic events or planted by historic identities.
Scientific/ botanical	No special scientific or botanical value. Classified as noxious or surveillance plant or unwanted wilding exotic tree species.	Few good specimens of particular species in particular township or local community ✓	Rare throughout Ashburton District.	Rare in Canterbury region or significant tree group or ecological association or important seed or propagating material source.	Rare throughout New Zealand or arboretum or tree collection.	Only known specimen in New Zealand or last remnant of native trees or bush.
Importance of position in landscape	Totally obscured by trees, structures or not seen from a public place.	Small tree or tree more than 50% obscured by other trees, objects or landscape.	Roadside or park tree or tree/s in well frequented public place or private property.	Fine avenue or street plantings or tree/s growing in areas where other large trees are scarce. ✓	Principal feature of important public place or landscape design. Well known district landmark or provides "gateway" effect to township or local community.	Landmark of national importance or tree/s are a vital component of a definitive landscape design.
Cultural, ethnical, social, or spiritual values or to commemorate a personal sacrifice.	No special cultural, social, ethnical or spiritual values.	Planted by unknown persons to commemorate minor event.	Planted by well known person/organisation or event of local importance.	Tree well known throughout district to be of significance. Tree represented as emblem or symbol.	Tree well known throughout Canterbury region to be of significance.	Tree well known nationally to be of significance.

Factors	Points: 0	2	4	8	16	32
Size (Crown diameter x total height) or exceptional trunk diameter.	Very small – less than 10m ² .	Small – 10m ² to 50m ² .	Medium - 50m ² to 150m ² . ✓	Large – 150m ² to 250m ² or largest tree in locality.	Very large 250m ² or more. Very large specimen or trunk diameter exceptionally large for particular species or grove of trees.	Largest or one of largest of particular species in New Zealand.
Age	Recent planting.	5 – 50 years.	50 – 100 years. ✓	100 – 150 years.	150 years plus.	Oldest on record in New Zealand.
Form and condition	Dying, dead, diseased, unbalanced, bad structural defects or dangerous and cannot be rectified.	Poor condition or form, stable condition, no bad defects. Any hazardous and other conditions can be rectified.	Fair – reasonable form, stable condition, no bad defects.	Good form, healthy condition, making good growth or interesting character.	Exceptionally good, outstanding specimen for district and region.	One of best examples of species in New Zealand.
Suitability in relation to setting or site conditions	Totally obscures or is causing significant damage to heritage objects, buildings or any essential structure or utility.	Partially obscures a heritage object or is causing slight damage to important structures, dwellings or commercial premises that can be rectified.	Tree not obscuring or injuriously affecting any buildings, objects, structures, services or utilities. No significant negative values.	Good juxtaposition and harmony with important buildings, objects, structures and essential services or utilities.	Tree species and position specifically chosen and designed to enhance whole site or neighbourhood.	Classic and nationally recognised example of excellent landscape design with trees.
Functional value e.g. soil stabilization, noise amelioration, shelter, screening, pollution control shade tree etc.	No functional value. ✓	25% effective (state function).	50 % effective (state function).	75% effective (state function).	100% effective (state function).	Of vital public interest that function be maintained (state function).

Tree Measurements: Height: m Mean crown diameter: m Diameter breast height: mm

Tree Score : 34 points total

Inspected by: Date inspected:

As can be seen above, the protection of the tree was determined by an arboricultural expert through a range of different criteria, which concluded that the tree was worthy of protection. I understand that the original assessment was either undertaken by Mr Walter Fielding Cotterell, or was carried out under his supervision.

Policy 12.2C To use methods and rules in the District Plan to protect identified trees from loss or destruction.

Policy 12.2D To encourage the practice of planting trees, including indigenous trees, on publicly owned and managed land and protect these trees from unnecessary interference and destruction. The Plan goes on to

explain that trees have an important ecological, environmental, landscape, heritage and cultural role. It then discussed how trees collectively endow the landscape with ‘*distinctive environmental quality and character*’.

In discussing how trees are considered worthy of protection, the Plan states:

A Protected Tree is considered to be worthy of a high level of recognition for a range of the features set out in Policy 12.2B. For example, the tree may be one that is rarely seen in cultivation or is an exceptional example of a more common species, as well as having an age that may associate it with early European settlement or an important historical event. Furthermore its size and location may make it a landmark within the District or a smaller locality. A tree may also be significant due to its association with a person of social significance. These trees are considered to merit a higher level of protection due to their significance. A set of evaluation criteria is included in Appendix 12-5 to provide information on the way in which trees are selected for inclusion within the District Plan.

The Plan then includes environmental results anticipated, the last of which refers specifically to trees:

- *The retention, within their natural life spans, of trees or groups of trees, which have significant value to the District’s residents and visitors.*

Finally in 12.6.2 the Plan contains commentary on the reasons for the rules relating to protected trees.

‘The protected trees are considered worthy of recognition because of their ecological, environmental, landscape, heritage or cultural role. The number of trees protected is only a very small proportion of the total trees in the District, but are those that stand out for their particular contribution to the environment. Protected Trees are those which possess outstanding features of botanic or scientific significance or represent historical, landmark, landscape, cultural or social values of significance, visual or cultural/historic heritage value. Removal, significant trimming or potential damage to such trees is considered to warrant special consideration by the Council as discretionary activities with a view to assessing alternative courses of action and the degree to which the protection of the tree is warranted in each circumstance. Removal of Protected Trees is a non-complying activity due to their high level of significance.’

Having regard to the objectives and policies listed above, and given the tree remains worthy of recognition, despite the damage recently caused to it, I consider the proposal to remove the tree is contrary to the objectives and policies of the Plan which seek to protect trees from being removed due to their high level of significance.

9.1 Objectives and Policies Summary

I therefore consider the proposal to remove the tree is contrary to the objectives and policies of the plan.

10 THRESHOLD TEST FOR A NON-COMPLYING ACTIVITY (SECTION 104D)

As set out in full above, section 104D of the Act directs that a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or the application is for an activity that will not be contrary to the objectives and policies of the relevant plan (section 104D(1)(b)(i)).

I understand that when considering whether the adverse effects will be minor, there is no statutory authority to consider the positive effects that might accrue from the proposal. Rather it is the adverse effects, as proposed to be remedied and/or mitigated, and taken as a whole, that are to be no more than minor. Based on the assessment above, the proposal as applied for results in “more than minor” adverse on the protected tree and surrounding environment. I note that according to Mr Cadwallader, who has provided the most recent expert assessment of the tree, the tree, with remedial action and appropriate management, is expected to live for years to come. I consider that the remedial action proposed is an appropriate step at this point, and reflects the importance of the tree in the local environment.

When assessing the second aspect of the threshold or gateway test, my understanding that the term contrary means that a proposal must be “not repugnant” to the relevant plan objectives and policies rather than simply not being in accordance or inconsistent with them. This is considered to be a high threshold, and in order to be considered ‘contrary’ as in ‘repugnant’ the application must demonstrate significant level of inconsistency with the policy framework. Based on that threshold, the application as applied for is considered to be contrary to the relevant objectives and policies.

On that basis I consider that the application as applied for will not meet the threshold test for a non-complying activity and therefore is not eligible for approval pursuant to section 104D of the RMA.

Notwithstanding my findings with regard to the threshold test consistent with my assessment above, the remaining statutory considerations are assessed on the basis that it may assist the Commissioner and the hearing process.

11 CONSIDERATION OF ALTERNATIVES

Schedule 4 of the RMA sets out that an AEE must include a description of any possible alternative locations or methods of undertaking the activity where it is likely the activity will result in adverse effects.

The applicant does not include any alternatives to the proposal.

12 OTHER MATTERS (SECTION 104(1)(C))

Section 104(1)(c) sets out that when considering an application for a resource consent the consent authority must, subject to Part 2, have regard to any other matter the consent authority considers relevant and reasonably necessary to determine the application.

In the context of the subject application the only ‘other matter’ I consider relevant is the question of precedent and plan integrity.

12.1 Precedent and Plan Integrity

Case law that relates to the concept of precedent reflects a concern that the granting of resource consent may have planning significance beyond the immediate vicinity of the land concerned; with plan integrity more likely to affect the public confidence in the plan and its consistent administration. It is acknowledged that "precedent" is not an adverse effect on the environment. However, these are considered to be matters that can be considered under section 104(1)(c) of the RMA, with the appropriate weight to be given to them being dependent on the circumstances of the particular application.

In order to avoid precedent and subsequent effects on the integrity of the District Plan, a proposal for a non-complying activity as proposed would need to establish unusual qualities that might distinguish it from other applications.

In my view, the only unusual quality that might distinguish this application from others, is the fact that the applicant has already attempted to physically remove the tree, and was only limited in that attempt by enforcement action taken by the Council. A situation whereby the attempted, albeit aborted, removal of a tree makes a later application for removal easier through damage incurred, would have a significant detrimental impact on the public confidence in the Plan and would in my view result in a precedent effect. Furthermore, by their nature, significant or protected trees are commonly supported by external structures, and this fact does not lessen the importance of the tree or its appropriateness for protection. Indeed, around the world, many significant large trees are supported with cables or props and are considered no less worthy of protection.



An example of a supported tree that remains worthy of protection – Sherwood Forest’s ‘Major Oak’, Nottinghamshire.

13 CONCLUSION & RECOMMENDATION

As discussed above, it is my view, based on the expert opinion of Mr Cadwallader, that the tree in question remains worthy of protection, and that the health and safety effects of the tree as described by the applicant and submitters, are not of a level to which removal would become necessary. I do consider that the alternative to removal, being the remedial treatment proposed by Mr Cadwallader, is appropriate given the importance of the tree in its environment, and that any health and safety effects can be appropriately mitigated through these actions. Given the proposal is contrary to the objectives and policies of the District Plan, and has effects that are more than minor, the application to remove the tree should be declined, and remedial action be carried out.

Report prepared by:

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Mary Clay

Consultant Planner (Avanzar Consulting Ltd) on behalf of the Ashburton District Council

Date: 26 August 2021